

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in Section 705 of the Securities Act of 2000 (the "Act"), effective September 29, 2000 (D.C. Law 13-203, 47 DCR 7837, D.C. Official Code § 31-5601.01 *et seq.* (2001 Ed.)) hereby gives notice of the adoption of the following rules to be included in Title 17, Chapter 19 of the District of Columbia Municipal Regulations (DCMR). The rules govern the contents of registration statements, qualifications and licensure for issuer agents, small corporate offerings, exemptions from registration, and filing fees for securities offerings in the District, which began on June 1, 2001, pursuant to section 806 of the Act.

These rules were adopted on an emergency basis to protect the financial welfare of the citizens of the District, and to provide clarification and certainty regarding the securities registration requirements for issuers, issuer agents, and related industry participants. The rulemaking provides the Commissioner with the regulatory authority necessary to provide adequate financial oversight to protect citizens from questionable offers and sales of securities, which may have a detrimental financial impact on investors in such securities.

This Notice Final Rulemaking supersedes the notice as published in the Notice of Emergency and Proposed Rulemaking in the D.C. Register on October 5, 2001 at 48 DCR 9177.

17 DCMR is amended by adding a new Chapter 19, Registration of Securities Offerings, to read as follows:

REGISTRATION OF SECURITIES OFFERINGS

1900 GENERAL PROVISIONS

- 1900.1 An application to register securities in the District of Columbia pursuant to Title III and Title IV of the Securities Act of 2000 (D.C. Law 13-203, 47 DCR 7852) shall be filed with the Department of Insurance and Securities Regulation ("Department"), or any other entity designated by the Department, on forms provided for that purpose in accordance with the instructions for preparation and execution of the forms.
- 1900.2 The registration requirements of Section 301 apply to securities that are being offered or sold to residents of the District of Columbia on or after June 1, 2001. If a securities issue is already being offered or sold in the District prior to June 1, 2001, the issue may continue to be sold while the

application for registration and the required fee payment are being processed by the Department, so long as the application and fee payment are received on or before June 1, 2001. The Commissioner reserves the right to initiate an administrative or civil action for any securities offering that violates a provision of the Act.

- 1900.3 The notice filing requirements for federal covered securities become applicable on June 1, 2001. If a securities issuer that is subject to notice filing requirements is already being offered or sold to residents of the District of Columbia prior to June 1, 2001, the issue may continue to be offered or sold to residents of the District of Columbia while the notice filing and required fee payment are being processed by the Department, so long as the notice filing and fee payment are received on or before June 1, 2001. Except for a security covered by § 18(b)(1) of the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. § 77a *et seq.*), the Commissioner reserves the right to initiate an administrative action pursuant to § 308 (f) of the Act.
- 1900.4 The registration statement may be filed by the issuer, broker-dealer, or any other person on whose behalf the offering is to be made.
- 1900.5 Whenever an application, notice, statement, report or other document ("Document") has been filed and the person who filed the document wishes to amend or otherwise ensure that the Document is current and accurate in all material respects, the person shall make a filing with the Commissioner constituting the amendment which also shall identify the Document being amended including, with respect to an amendment to a form authorized by these regulations, the name of the form, the date the form originally was filed with the Department and the items or schedules of the form which are being amended.
- 1900.6 All relevant time periods in the Act for processing of filings by the Department will begin running on the first business day after the date the document is received by the Department.
- 1900.7 Any electronic method acceptable to the Director of the Securities Bureau ("Director") may be used to make any filings with the Department. The filing of documents and information using such an electronic method shall be equivalent to paper filing of documents and information with the Department. The Bureau will accept conformed, stamped, or computer generated signatures in place of manual signatures for any notice or filing submitted to the Bureau, in paper or electronically, except that it will continue to require manual signatures for the Form U-2 Consent to Service of Process, and to any filing where there are any material changes.
- 1900.8 All sales and advertising literature relating to an offering of securities for which a registration statement has been filed with the Department pursuant

to §§ 302, 303, or 304 of the Act also shall be filed with the Department and have prominently displayed by legend or printed sticker on the front cover of the sales and advertising literature, in bold-face type, substantially the following statement:

“THIS SALES AND ADVERTISING LITERATURE MUST BE READ IN CONJUNCTION WITH THE PROSPECTUS IN ORDER TO UNDERSTAND FULLY ALL OF THE IMPLICATIONS AND RISKS OF THE OFFERING OF SECURITIES TO WHICH IT RELATES. A COPY OF THE PROSPECTUS MUST BE MADE AVAILABLE TO YOU IN CONNECTION WITH THIS OFFERING.”

- 1900.9 The Commissioner shall review the sales and advertising literature required to be filed under § 1900.8 and, if 7 days after the filing of the material, he has not issued a stop-order or other order with respect to it, the material may be used in connection with the offering of securities to which it relates. If a stop order or other order is issued, then the sales and advertising literature, and the use of it, shall comply in all respects with the order.
- 1900.10 As used in this section, “sales and advertising literature” includes any pamphlet, circular, form letter, advertisement or printed advertising communication, films, film strips, television and radio presentations, tape and cassette recordings, and any other public lecture addressed or intended for distribution to and/or delivered to prospective investors including clients or prospective clients of an agent or broker-dealer; provided, however, that “sales and advertising literature” does not include:
- (a) Any prospectus used in conjunction with an offer or sale, or both, of securities;
 - (b) Any individual letter sent to a prospective investor where the issuer has filed a registration statement with the Commissioner relating to the offer or sale, or both, of securities to which the letter relates, provided, however, that the letter shall direct the prospective investor to the prospectus or be accompanied by a copy of the prospectus;
 - (c) Tombstone advertisements;
 - (d) Dividend notices, proxy statements and reports to shareholders, the content of which does not pertain to a current offering or sale, or both, of securities of the issuer;

- (e) Literature disseminated in connection with the distribution of securities of an investment company registered under §8 of the Investment Company Act of 1940 (54 Stat.; 15 U.S.C. § 80a-1 *et seq*);
- (f) Literature relating to any securities, offer or sale, or both, of securities, to which is applicable one or more of the exemptions from registration contained within Title IV of the Act;
- (g) Written or printed material relating to an offer or sale, or both, of securities pursuant to a:
 - (1) Qualified employee stock, or stock-option plan, or
 - (2) Merger, consolidation, exchange offer, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another issuer;
- (h) A written or printed material which is otherwise required to be filed under the registration provisions of the Act.

1900.11 Pursuant to the power granted in Section 307 of the District of Columbia Securities Act of 2000 (the “Act”), the Commissioner of the District of Columbia Department of Insurance and Securities Regulation hereby recognizes each of the securities manuals listed in § 1900.12 to be a “nationally recognized securities manual” under Title IV, Section 402(2)(D) of the Act and the conditions attached therein. The term “manual” for purposes of this order shall include all commonly recognized formats of publications, including CD-ROM and electronic dissemination over the Internet.

1900.12 The Department recognizes the following securities manuals:

- (a) Mergent’s Industrial Manual;
- (b) Mergent’s Transportation Manual;
- (c) Mergent’s Public Utility Manual;
- (d) Mergent’s Bank and Finance Manual;
- (e) Mergent’s International Manual;
- (f) Standard & Poor’s Standard Corporation Descriptions;
- (g) Fitch’s Individual Stock Bulletin; and

(h) Mergent's OTC Industrial Manual.

1901 REGISTRATION BY NOTIFICATION

- 1901.1 Applicants for Registration by Notification shall file with the Commissioner two copies of an application, including a statement demonstrating the applicant's eligibility for Registration by Notification, and a registration statement meeting the requirements of § 302(b) of the Act. The application shall be signed by a duly authorized corporate official.
- 1901.2 The prospectus referred to in § 302(c) of the Act shall consist of the registration statement. The prospectus shall meet the formal requirements set forth in §§ 1910 through 1939 of these regulations.
- 1901.3 The registration of securities under § 302 of the Act will be effective when so ordered by the Director.
- 1901.4 Applicants for Registration by Notification shall pay a filing fee as provided in § 1949.1.

1902 REGISTRATION BY COORDINATION

- 1902.1 A securities offering for which a registration statement has been filed with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933 may be registered by coordination.
- 1902.2 A registration statement filed under this section shall contain the following information and be accompanied by the following documents and fee:
- (a) A completed application Form U-1, Uniform Application to Register Securities, and a statement specifying the amount of securities sold in the District;
 - (b) An irrevocable consent appointing the Commissioner agent for service of process, executed by the applicant on Form U-2, Uniform Consent to Service of Process;
 - (c) Two copies of the latest prospectus or offering circular filed under the Securities Act of 1933;
 - (d) A filing fee as provided in § 1949.1;
 - (e) Any other document or information requested by the Commissioner before the effective date of the offering.

- 1902.3 A registration by coordination shall become effective in the District simultaneously with the registration statement filed with the SEC, provided the following conditions have been met:
- (a) All documents and information required by § 1941 and any other information required by § 303 of the Act or these regulations for registration by coordination have been filed with the Department;
 - (b) No stop order is in effect and a proceeding is not pending under § 307 of the Act;
 - (c) The registration statement has been filed with the Department for at least 10 business days;
 - (d) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file with the Department for at least two full business days; and,
 - (e) The fee required by § 1902.2(d) has been received by the Department.
- 1902.4 Any amendments and addendums to the registration statement filed with the SEC shall also be filed promptly with the Department. No fee is required for amendments, except for amendments that increase the number of shares or dollar amount that was originally reported.
- 1902.5 The issuer shall notify the Department in writing when the offering is concluded.
- 1902.6 The Commissioner will permit the use of the Uniform Application Form adopted by the National Association of Securities Commissioners and the Uniform Application to Register Securities (Form U-1) adopted by the Midwest Securities Commissioners Association to satisfy the requirements of § 303(b) of the Act, provided, however, that no instruction, undertaking, or other matter appearing in the forms shall be deemed to modify, or in any way affect, the application of the requirements of the Act and of the rules and regulations under it to the registration.
- 1903 REGISTRATION BY COORDINATION OF SHELF REGISTRATIONS PURSUANT TO SEC RULE 415 OF THE 1933 ACT**
- 1903.1 Securities which are qualified to be registered on a Shelf Registration Statement with the SEC pursuant to Rule 415, and which are to be offered

in series or offered and sold on a continuous or delayed basis, may be registered by coordination by filing the following documents and fee:

- (a) By filing Form U-1, Uniform Application to Register Securities;
- (b) Together with any supplements or amendments to the initial registration statement; and
- (c) A one-time filing fee with the initial registration statement as provided in § 1949.2.

1903.2 In all other respects, registrations by coordination of shelf registrations under this section shall comply with the general provisions applicable to registrations by coordination found in § 303 of the Act, and the other applicable provisions of these regulations.

1904 REGISTRATION BY QUALIFICATION

1904.1 Any securities offering may be registered by qualification.

- (a) Except as provided in § 1905, an issuer who seeks to register a security by qualification shall file with the Department, the following documents and information:
 - (1) Form U-1, Uniform Application to Register Securities, (together with all exhibits, which shall include all information required under §§ 304 and 306 of the Act);
 - (2)
 - (A) One copy of an executed SEC Form S-1; or
 - (B) A completed Form U-7, Small Corporate Offerings Registration Form;
 - (3) An irrevocable consent appointing the Commissioner agent for the service of process, executed by the applicant on Form U-2, Uniform Consent to Service of Process, and accompanied by Form U-2A, Uniform Corporate Resolution;
 - (4) Two copies of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended, as of the effective date, to be used in connection with the offering;
 - (5) A filing fee as provided in § 1949.1; and

- (6) Any other document or information requested by the Director.
- (b) Unless otherwise ordered by the Commissioner, the prospectus which is sent or given to each person to whom an offer is made shall contain all the information contained in the registration statement filed with the Department under subsection (a) of this section. The prospectus shall be written in plain English and presented in a format that is clear and easy to understand, with appropriate headings and subheadings.
- (c) An application for registration by qualification shall become effective in the District when so ordered by the Commissioner.

1905 SMALL CORPORATE OFFERINGS REGISTRATION

- 1905.1 Applicants that are eligible for small corporate offerings registration may register by using the Form U-7 (Small Corporate Offering Registration Form), if the conditions set forth in this section and in the instructions to Form U-7 are satisfied.
- 1905.2 An application for registration under this section shall be filed with the Commissioner.
- 1905.3 An application for registration under this section shall contain:
 - (a) All forms and exhibits required by the instructions in the Form U-7:
 - (b) If the issuer does not make the offering through a registered broker-dealer, an application for issuer agent registration prepared in accordance with § 1946, unless the agents are exempt from registration; and
 - (c) A filing fee as provided in § 1949.3.
- 1905.4 An application to register securities under this section shall be prepared in accordance with the instructions set forth in the Form U-7 (Small Corporate Offering Registration Form) adopted by the North American Securities Administrators Association, Inc., on April 29, 1989, as it may be amended from time to time.
- 1905.5 A completed Form U-7 that has been declared effective by the Commissioner shall serve as the prospectus for an offering registered under this section.

- 1905.6
- (a) To be eligible to register securities under this section, the issuer shall satisfy the following conditions:
 - (1) The issuer is a corporation organized under the laws of the District or one of the states or possessions of the United States;
 - (2) The issuer engages in, or proposes to engage in, a business other than petroleum exploration or mining or other extractive industries;
 - (3) The issuer is not an investment company subject to the Investment Company Act of 1940, 15 U.S.C. §§80a-1--80a-52;
 - (4) The issuer is not subject to the reporting requirements of §13 or §15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§78m, 78o(d).
 - (b) To be eligible for registration under this section, an offering shall satisfy the following conditions:
 - (1) The aggregate offering price in any 12-month period does not exceed \$1,000,000 for an offering under 17 CFR § 230.504 (SEC Rule 504), or \$5,000,000 for an offering under 17 CFR § 230.231 through 230.262 (SEC Regulation A), less the aggregate offering price for all securities sold within the 12 months prior to the commencement of, and during, the offering of the securities.
 - (2) The offering is not a “blind pool” offering or other offering for which the specific business or properties cannot be described at the time of the offering;
 - (3) The securities are to be offered and sold only on behalf of the issuer and not on behalf of any selling security holder;
 - (4) If the securities are common stock, the offering price equals or exceeds \$1.00 per share;
 - (5) If the securities are options, warrants, or rights for common stock, the exercise price equals or exceeds \$5 per share;
 - (6) If the securities are convertible into common stock, the conversion price equals or exceeds \$5 per share; and

- (7) The offering is exempt from registration with the SEC under 17 CFR §230.501--230.508 (SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933).

1905.7

An issuer may not register an offering under this section if the issuer, any of its officers, directors, beneficial owners of 10 per cent or more of any class of its equity securities, any promoters currently connected with it in any capacity, any selling agents of the securities to be offered, or any officer, director, or partner of such selling agent:

- (a) Within 5 years before the filing of the application for registration under this section, has filed a registration statement which is currently the subject of a stop order under any state's or District's securities law;
- (b) Within 5 years before the filing of the application for registration under this section, has been convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;
- (c) Is currently subject to any federal, state, or District administrative enforcement order or judgment?
 - (1) That was entered within 5 years before the filing of the application for registration under this regulation; and
 - (2) In which fraud or deceit, including untrue statements of material facts or omissions of material facts, was found;
- (d) Is subject to any federal, state, or District administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption from registration in connection with the current offer, purchase, or sale of securities; or
- (e) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years before the filing of the application for registration under this regulation, temporarily, preliminarily, or permanently restraining or enjoining, the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving

the making of any false filing with a district, state, or federal agency.

1905.8 The disqualifications set forth in § 1905.7 of this section do not apply if the:

- (a) The license of the person subject to the disqualification has not been suspended or revoked, and there are no pending proceedings against the person; and
- (b) Form BD or Form U-4 filed with the Commissioner discloses the disqualifying event.

1905.9 The Commissioner, by order, may waive a disqualification set forth in § 1905.7 if the Commissioner finds that the waiver is consistent with the public interest and within the purposes fairly intended by the policy and provisions of the Act.

1906 UNDERTAKING NOT TO SPLIT STOCK

1906.1 By execution and filing of the Form U-7, the issuer undertakes not to split its common stock, or declare a stock dividend, for 2 years after the effectiveness of the registration.

1906.2 Notwithstanding § 1906.1 of this section, an issuer may apply to the Commissioner for approval to split its common stock or declare a stock dividend in connection with a subsequent registered public offering.

1907 RESERVED

1908 SMALL CORPORATE OFFERINGS REPORTS FILED WITH THE COMMISSIONER

1908.1 An issuer that qualifies for a small corporate offering registration shall file quarterly reports with the Department that shall:

- (a) Contain the information required by §§ 1910 through 1939; and
- (b) Certify that no changes or amendments were made to the Form U-7 or any sales or advertising materials other than changes or amendments filed with and declared effective by the Commissioner.

1908.2 After the registration statement has been declared effective, and while the offering is still in progress, the disclosure form shall be amended or supplemented to reflect material events concerning the issuer or the offering to make the disclosure form accurate and complete. A copy of

the disclosure form as changed, revised or supplemented clearly marked to show changes from the previously filed version (including amendments to reflect registration effectiveness in other jurisdictions) shall be filed with the Commissioner. If any of the revisions are of such significance as to materially change the terms of the offering or the financial condition of the company, the disclosure document, as revised or supplemented, shall be recirculated to persons in the District that have previously subscribed, and they shall be given the opportunity to rescind or reconfirm their investment.

1908.3 Annual financial reports shall be filed with the Department within 90 days after the close of the issuer's fiscal year for a period of three (3) years following the effective date of the registration. In the event the corporation ceases operation, such financial reports shall continue to be furnished to the Department unless the corporation is dissolved and all remaining assets distributed, if any. In such an event, the issuer shall furnish documentation to the Department to close the file.

1908.4 The issuer shall file with the Department any reports that the Commissioner may require.

1908.5 The issuer shall file with the Department all sales and advertising literature that the issuer or its agents use in connection with the offering.

1909 RESERVED

1910 PROSPECTUS

1910.1 Sections 1910 through 1939 prescribe the form and content of the prospectus required to be filed as part of a registration statement for registration of securities by qualification and to be used in connection with the offering of securities so registered.

1910.2 A prospectus filed as part of a registration statement for registration of securities by qualification shall contain all the information required by these regulations.

1910.3 A prospectus filed with the Securities and Exchange Commission under the Securities Act of 1933 shall be provided to the Department as part of the registration statement for registration of securities by coordination.

1910.4 A prospectus filed as part of a registration statement for registration of securities by notification shall contain all the information required by § 302 of the Act.

1911 LEGIBILITY OF PROSPECTUS

The prospectus and all notes to the financial statements and other tabular information included therein shall be printed, mimeographed, typewritten, or prepared by any similar process which will result in clear, legible copies. It shall be set in clear Roman type at least as large as 10-point modern type, with financial data or other statistical or tabular information at least as large as 8 point. All type shall be leaded at least 2 points.

1912 PRESENTATION OF INFORMATION IN PROSPECTUS

1912.1 The prospectus shall contain the information called for by all items contained in §§ 1920 through 1939 (Form U-7) and shall be answered, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted. None of the other information or documents filed as a part of the registration statement need be included in the prospectus.

1912.2 Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. When it is deemed necessary or desirable to call attention to the information in more than one part of the prospectus, this may be accomplished by appropriate cross-references. Instead of restating information in the form of notes to the financial statements, references may be made to other parts of the prospectus where the information is set forth.

1912.3 All information contained in the prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth under it.

1912.4 Every prospectus shall include in its forepart a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions and the page number on which each section or subdivision begins.

1913 DATE OF PROSPECTUS

1913.1 Each prospectus used after the effective date of the registration statement shall be dated approximately as of the effective date, provided, however, that a revised or amended prospectus used after the effective date need only bear the date of its issuance.

1913.2 Each supplement to a prospectus shall be separately dated with the date of its issuance.

1914 EXCHANGE OFFERS

1941.1 No offer, sale, exchange or distribution of the securities shall be made pursuant to § 402(19) of the Act until the Commissioner has provided the issuer with a written opinion granting the exemption.

1914.2 A request for a written opinion granting an exemption under § 402(19) of the Act shall be accompanied by a fee provided for in § 1949.10.

1915 PRELIMINARY PROSPECTUS

A prospectus filed as part of a registration statement is a preliminary prospectus until the registration statement has become effective. Every preliminary prospectus shall bear on the outside front cover page the following caption underscored or in red ink, “Preliminary Prospectus”, and the following statement, in type as large as that generally in the body of the prospectus:

“A registration statement relating to these securities has been filed with the Securities Bureau of the District of Columbia Department of Insurance and Securities Regulation, but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold, nor may offers to buy be accepted prior to the time the registration statement becomes effective.”

1916 REQUIRED LEGEND

Every prospectus shall bear the following legend in bold capital letters on the outside front cover page:

“THESE SECURITIES ARE OFFERED FOR SALE IN THE DISTRICT OF COLUMBIA PURSUANT TO REGISTRATION WITH THE DISTRICT OF COLUMBIA DEPARTMENT OF INSURANCE AND SECURITIES REGULATION, BUT REGISTRATION IS PERMISSIVE ONLY AND DOES NOT CONSTITUTE A FINDING THAT THIS PROSPECTUS IS TRUE, COMPLETE, AND NOT MISLEADING, NOR HAS THE DEPARTMENT OF INSURANCE AND SECURITIES REGULATION PASSED IN ANY WAY UPON THE MERITS OF, RECOMMENDED, OR GIVEN APPROVAL TO THESE SECURITIES. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.”

1917 USE OF PROSPECTUS

- 1917.1 It is a condition of registration of securities by notification or qualification that a prospectus satisfying the requirements of these regulations shall be sent or given to each person to whom an offer is made.
- 1917.2 When a prospectus is used more than 9 months after the effective date of the registration statement, the information contained in it shall be as of a date not more than 16 months before the use, so far as the information is known to the user of the prospectus or can be furnished by the user without unreasonable effort or expense.
- 1917.3 In addition to the requirements of § 1929, if a prospectus becomes misleading or inaccurate in any material respect, its use shall be discontinued, and it shall be revised or supplemented in such a way that it may not be misleading or inaccurate in any material respect. Two copies of a revised or supplemented prospectus shall be promptly filed with the Commissioner. Nothing in this paragraph shall be taken to relieve any person from the requirements of § 1917.

1918 ADDITIONAL INFORMATION

In addition to the information expressly required to be included in a prospectus or a registration statement by these regulations, or both, there shall be added such further information, if any, as may be necessary in order to make the statements made in a prospectus or a registration statement, or both, in the light of the circumstances under which they are made, not misleading.

1919 GUIDELINES

Issuers should consult releases issued by the Director from time to time respecting guidelines as to compliance with the procedural, form and contents requirements for a registration statement and a prospectus set forth in this regulation.

1920 DISTRIBUTION SPREAD

- 1920.1 The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities being offered which are to be offered for cash (estimate, if necessary).

| | Price to Public | Underwriters discounts and commissions | Proceeds to issuer or other persons |
|----------------|-----------------------|--|---|
| Per Unit | | | |
| Total | | | |

- 1920.2 Any variation from the price set forth in the first column of the table at which any proportion of the offering is to be made to any person or class of persons other than the underwriters shall be disclosed following the table with a reference to it in the first column of the table. Specify the person or class and the proposed offering price to that person or class.
- 1920.3 For purposes of this section, “commissions” means all cash commissions or discounts paid or to be paid, directly or indirectly, by the issuer or selling security holders to the underwriters in respect of the sale of the security to be offered. A commission paid or to be paid in connection with the sale of a security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Only commissions paid by the issuer or selling security holders are to be included in the table. Commissions paid by other persons shall be set forth following the table with a reference to it in the second column of the table.
- 1920.4 If securities, contracts, or anything else of value (other than cash) is to accrue to the underwriters in connection with the offering, the amount and nature of the considerations shall be set forth following the table with a reference to it in the second column of the table.
- 1920.5 If any finder’s fees are to be paid in connection with the offering, the name and address of each recipient of it, together with the amount and nature of the fee, shall be set forth following the table with a reference to it in the second column of the table.
- 1920.6 If the underwriting discounts or commissions are variable, set forth their maximum and minimum amounts in the second column of the table and set forth the maximum and minimum proceeds in the third column of the table. The basis of determining the discounts and commissions shall be set forth following the table with a reference to it in the second and third columns of the table.
- 1920.7 An estimate of the aggregate selling expenses (other than underwriting discounts and commissions and finder’s fees) payable by the issuer or selling security holders shall be set forth following the table with a reference to it in the third column of the table. The estimate shall include printing, legal, engineering, accounting and other charges.

1920.8 If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, indicate the market involved and the market price as of the latest practicable date.

1920.9 If any of the securities being registered are to be offered for the account of security holders, the issuer shall refer on the outside front cover page of the prospectus to the information called for by § 1927.

1921 PLAN OF DISTRIBUTION

1921.1 If the securities being registered are to be offered through underwriters, the issuer shall give the names and addresses of the underwriters, their relationship, if any, to the issuer and state briefly the nature of the underwriters' obligation to take the securities.

1921.2 All that is required as to the nature of the underwriters' obligation is whether it is a "firm commitment" under which the underwriters must take and pay for all of the securities, if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public.

1921.3 Issuers shall outline briefly the plan of distribution of any securities being registered which are to be offered otherwise than through an underwriter.

1922 USE OF PROCEEDS TO ISSUER

1922.1 The issuer shall state the principal purposes for which the net proceeds to the issuer from the offering are intended to be used, and the approximate amount intended to be used for each purpose.

1922.2 The issuer shall provide details of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment.

1922.3 The issuer shall include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied.

1922.4 If any material amounts of other funds are to be used in conjunction with the proceeds, the issuer shall state the amounts and sources of the other funds.

1922.5 If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, the issuer shall briefly describe the assets and give the names of the persons from whom they are to be acquired. The issuer shall state the purchase price of the assets, the names of any persons who have received or are to receive commissions in connection with the acquisition, the amounts of the commissions and any other expense in connection with the acquisition.

1923 SALES OTHERWISE THAN FOR CASH

If any of the securities being registered are to be offered otherwise than for cash, the issuer shall state briefly the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne.

1924 CAPITALIZATION AND LONG-TERM DEBT

1924.1 The issuer shall furnish the information called for by the following table, in substantially the tabular form indicated, as to each class of securities of the issuer and each class of securities, other than those owned by the issuer or its totally-held subsidiaries, of all significant subsidiaries of the issuer.

| | | Amount outstanding as of a specified date within <u>90 days</u> | Amount to be outstanding if all securities registered <u>are sold</u> |
|------------------------------------|--|--|--|
| <u>Title</u> of <u>class</u> | <u>Amount</u> authorized or to be <u>authorized</u> | | |

1924.2 Securities held by or for the account of the issuer thereof are not to be included in the amount outstanding, but the amount so held shall be stated in a note to the table.

1924.3 If any of such securities were issued within the last 2 years or will be issued for a consideration other than cash at least equal to par value, the issuer shall disclose in appropriate footnotes to the table the amount and kind of the consideration.

1925 FINANCIAL STATEMENTS

1925.1 The issuer shall furnish in comparative columnar form a profit and loss statement and analysis of surplus for each of the last 3 fiscal years of the

issuer (or for the life of the issuer and its immediate predecessors, if less) preceding the date of the balance sheet furnished and for any period subsequent to the latest of the fiscal years and the date of the balance sheet.

- 1925.2 If the prospectus is filed as part of a registration statement for registration of securities by notification, instead of the profit and loss statement and analysis of surplus required in § 1925.1, the issuer shall furnish in comparative columnar form a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 2 years.

1926 ORGANIZATION OF ISSUER

With respect to the issuer and any significant subsidiary of the issuer, the issuer shall state:

- (a) The year in which it was organized;
- (b) Its form or organization, (such as "a corporation", "an unincorporated association" or other appropriate statement);
- (c) The name of the state or other jurisdiction under the laws of which it was organized; and
- (d) The address of its principal executive offices.

1927 SELLING SECURITY HOLDERS

With respect to each person on whose behalf any part of the offering is to be made in a non-issuer distribution, the issuer shall provide the following information:

- (a) His name and address;
- (b) The amount of securities of the issuer held by him as of the date of the filing of the registration statement; and
- (c) A statement of his reasons for making the offering.

1928 DESCRIPTION OF BUSINESS

- 1928.1 The issuer shall briefly describe the business done and intended to be done by the issuer and its significant subsidiaries, and the general development

of the business during the past 5 years. If the business consists of the production or distribution of different kinds of products or the rendering of different kinds of services, the issuer shall indicate, insofar as practicable, the relative importance of each product or service, or class of similar products or services, which contributed 15 percent or more to the gross volume of business done during the last fiscal year.

1928.2 The issuer shall provide a description, which may not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done.

1928.3 In describing developments, the issuer shall provide information to be given as to matters such as the following:

- (a) The nature and results of any bankruptcy, receivership, or similar proceedings with respect to the issuer or any of its significant subsidiaries;
- (b) The nature and results of any other materially important reorganization, readjustments, or succession of the issuer or any of its significant subsidiaries;
- (c) The acquisition of any material amount of assets otherwise than in the ordinary course of business;
- (d) Any materially important changes in the types of products produced or services rendered by the issuer and its significant subsidiaries; and
- (e) Any materially important changes in the mode of conducting the business, such as fundamental changes in the methods of distribution.

1928.4 The issuer shall indicate briefly, to the extent material, the general competitive conditions in the industry in which the issuer and its significant subsidiaries are engaged or intend to engage, and the position of the enterprise in the industry. If several products or services are involved, separate consideration should be given to the principal products or services or classes of products or services.

1929 DESCRIPTION OF PROPERTY

1929.1 The issuer shall state briefly the location and general character of the principal plants, mines, and other materially important physical properties of the issuer and its significant subsidiaries. If any such property is not

held in fee or is held subject to any major encumbrance, so state and briefly describe how it is held.

- 1929.2 The issuer shall provide a description which should be limited to information essential to an investor's appraisal of the securities being registered. In the case of a manufacturing enterprise, for example, the answer should be limited to such over-all statements as will reasonably inform investors as to the suitability, adequacy, and productive capacity of the facilities used in the enterprise. In the case of an extractive enterprise, appropriate information should be given as to production and reserves. Detailed descriptions of the physical characteristics of individual properties, or legal descriptions by metes and bounds, are not required and should not be given.

1930 ORGANIZATION WITHIN 3 YEARS

If the issuer was organized within the past 3 years otherwise than as the successor to one or more predecessors, the issuer shall furnish the following information:

- (a) The names, addresses, and principal occupations for the past 5 years of the promoters; state the nature and amount of anything of value (including money, property, contracts, options, or rights of any kind) received or to be received by each promoter directly or indirectly from the issuer, and the nature and amount of any assets, services, or other consideration therefore received or to be received by the issuer;
- (b) As to any assets acquired or to be acquired by the issuer from a promoter, the amount at which acquired or to be acquired and the principle followed or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the issuer or any promoter. If the assets were acquired by the promoter within 2 years before their transfer to the issuer, state the cost of it to the promoter; and
- (c) A description of any other material interest of a promoter in any material transaction with the issuer or any significant subsidiary effected or proposed to be effected.

1931 PENDING LEGAL PROCEEDINGS

- 1931.1 The issuer shall briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the issuer or any of its subsidiaries is a party, or of which any of their property is the subject. The description shall include the name of the court

in which the proceedings are pending, the date instituted and the principal parties to it, and include similar information as to any proceedings known to be contemplated by governmental authorities.

1931.2 If the business ordinarily results in actions for negligence or other claims, an action or claim need not be described by the issuer, unless it departs from the normal kind of actions.

1931.3 Information need not be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 15 percent of the current assets of the issuer and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in the other proceedings shall be included in computing such percentage.

1931.4 Notwithstanding the provisions of §§ 1931.2 and 1931.3, the issuer shall describe any bankruptcy, receivership, or similar proceeding with respect to the issuer or any of its significant subsidiaries. Any proceeding in which any of the following persons has an interest adverse to the issuer or its subsidiaries shall also be described, including the following:

- (a) Any director, officer, or affiliate of the issuer;
- (b) Any security holder named in answer to § 1937; or
- (c) Any person having a material relationship with the director, officer, or security holder.

1932 CAPITAL STOCK BEING REGISTERED

1932.1 If capital stock is being registered, the issuer shall state the title of the class and furnish the following information:

- (a) Dividend rights;
- (b) Voting rights;
- (c) Liquidation rights;
- (d) Pre-emptive rights;
- (e) Conversion rights;
- (f) Redemption provisions;

- (g) Sinking fund provisions; and
 - (h) Liability to further calls or to assessment by the issuer.
- 1932.2 If the rights of holders of a stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, the issuer shall state and explain briefly.
- 1932.3 The issuer shall outline briefly any restriction on the repurchase or redemption of shares by the issuer while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.
- 1932.4 The issuer shall provide a brief summary of the pertinent provisions from an investment standpoint is required. A complete legal description of the provisions referred to is not required and should not be given. The issuer need not set forth the provisions of the governing instruments verbatim. Only a succinct resume is required.
- 1932.5 If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities, the issuer shall include the information regarding such other securities as will enable investors to understand the rights evidenced by securities being registered. Information need not be given, however, as to any class of securities, all of which will be redeemed and retired, provided appropriate steps to assure the redemption and retirement will be taken before or upon delivery by the issuer of the securities being registered.

1933 LONG-TERM DEBT BEING REGISTERED

- 1933.1 If long-term debt is being registered, the issuer shall state the title of the issue and outline any of the following provisions that are relevant:
- (a) Provisions with respect to interest, maturity, conversion, redemption, amortization, sinking fund, or retirement;
 - (b) Provisions with respect to the kind and priority of any lien, restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves, or the maintenance of properties; and
 - (c) Provisions permitting or restricting the issuance of additional securities, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

- 1933.2 The issuer need not describe the provisions permitting the release of assets upon the deposit of equivalent funds, property no longer required in the business, obsolete property, or property taken by eminent domain.
- 1933.3 The issuer shall provide the name of the trustee and the nature of any material relationship with the issuer or any of its affiliates, the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.
- 1933.4 The issuer shall provide a brief summary of the pertinent provisions from an investment standpoint is required. A complete legal description of the provisions referred to is not required and should not be given. The issuer need not set forth the provisions of the governing instruments verbatim. Only a succinct resume is required.

1934 OTHER SECURITIES BEING REGISTERED

- 1934.1 If securities other than capital stock or long-term debt are being registered, the issuer shall outline briefly the rights evidenced by it. If subscription warrants or rights are being registered, the issuer shall state the title and amount of securities called for, the period during which and the prices at which the warrants or rights are exercisable.
- 1934.2 The issuer shall provide a brief summary of the pertinent provisions from an investment standpoint is required. A complete legal description of the provisions referred to is not required and should not be given. The issuer need not set forth the provisions of the governing instruments verbatim. Only a succinct resume is required.

1935 DIRECTORS AND OFFICERS

- 1935.1 The issuer shall list the names and addresses of all directors and officers of the issuer and all persons chosen to become directors or officers. Indicate all positions and offices with the issuer held by each person named, and the principal occupations during the past 5 years of each officer and each person chosen to become an officer. The issuer shall state the amount and type of securities of the issuer held by each person named as of a specified date within 30 days of the filing of the registration statement, and the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe.
- 1935.2 The issuer shall state whether any person chosen to become a director or officer has not consented to act as such.

1936 REMUNERATION OF DIRECTORS AND OFFICERS

- 1936.1 The issuer shall state the amount of the aggregate remuneration which the issuer (together with all predecessors, parents, subsidiaries, and affiliates) paid to, or set aside or accrued for the benefit of all directors and officers as a group during the past 12 months and estimate the remuneration for the next 12 months.
- 1936.2 This item applies to any person who was a director or officer of the issuer at any time during the fiscal year. However, remuneration is not to be included for any portion of the period during which the person was not a director or officer of the issuer.
- 1936.3 To the extent that the remuneration is to be computed upon the basis of a percentage of profits, it will suffice to state the percentage without estimating the amount of profits to be paid.
- 1936.4 The issuer shall state separately the total amount set aside or accrued during the periods pursuant to all pension, retirement or other deferred compensation plans for the benefit of directors or officers.

1937 PRINCIPAL HOLDERS OF EQUITY SECURITIES

- 1937.1 The issuer shall furnish the following information, in substantially the tabular form indicated, as to each person who owns of record, or beneficially if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer as of a specified date within 30 days before the date of filing.

| (1) | (2) | (3) | (4) | (5) |
|-------------------------|-----------------------|--------------------------|---------------------|-------------------------|
| <u>Name and Address</u> | <u>Title of Class</u> | <u>Type of Ownership</u> | <u>Amount Owned</u> | <u>Percent of Class</u> |

- 1937.2 The issuer shall indicate by footnotes the amount of the securities covered by the registration statement to which any person named in the table has indicated his intention to subscribe.

1938 INTEREST OF MANAGEMENT AND OTHERS IN CERTAIN TRANSACTIONS

- 1938.1 The issuer shall describe briefly, and where practicable state the approximate amount of any material interest, direct or indirect, of any of the persons specified below in any material transactions during the last 3 years, or in any material proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party:

- (a) Any director or officer of the issuer;
- (b) Any security holder named in § 1937;
- (c) Any person on whose behalf any part of the offering is to be made in non-issuer distribution; and
- (d) Any person (other than the issuer or its subsidiaries) with whom any of the foregoing persons had a material relationship.

1938.2 The issuer shall state the dates of, the parties to, and the general effect of every management or other material contract made or to be made otherwise than in the ordinary course of business, if it is to be performed in whole or in part at, or after, the filing of the registration statement, or was made within the past 2 years.

1939 OPTIONS TO PURCHASE SECURITIES

1939.1 The issuer shall furnish the following information as to options to purchase securities from the issuer or any of its subsidiaries, which are outstanding as of a specified date within 30 days before the date of filing, or which are to be created in connection with the offering.

1939.2 The issuer shall describe the options, stating the material provisions including the consideration received, or to be received, by the grantor of it and the market value of the securities called for on the granting date. If, however, the options are “restricted stock options” as defined in § 421 of the Internal Revenue Code of 1954 only the following is required:

- (a) A statement to that effect;
- (b) A brief description of the terms and conditions of the options or the plan pursuant to which they were issued; and
- (c) A statement of the provisions of the plan or options with respect to the relationship between the option price and the market price of the securities at the date when the options were granted, or with respect to the terms of any variable price option.

1939.3 The issuer shall provide the following information:

- (a) The title and amount of the securities called for by the options;
- (b) The purchase prices of the securities called for and the expiration dates of the options; and

- (c) The market value of the securities called for by the options as of the latest practicable date.

1939.4 The issuer shall state the amount of the options held or to be held by each of the following persons:

- (a) Any director or officer of the issuer;
- (b) Any security holder named in § 1937;
- (c) Any promoter named in § 1937;
- (d) Any person on whose behalf any part of the offering is to be made in a non-issuer distribution;
- (e) Any underwriter or recipient of a finder's fee;
- (f) Any person who holds or will hold 10 percent or more in the aggregate of the options.

1939.5 As used in this section, the term "options" as used in this section includes all options, warrants, and rights other than those issued to security holders as such on a pro rata basis.

1940 NOTICE FILINGS FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES

1940.1 In the case of initial filings, issuers of securities that are federal covered securities under Section 18(b)(2) of the Securities Act of 1933 and that are not otherwise exempt under Section 18(b)(1) of the Securities Act of 1933 shall, prior to offering the securities to residents of the District of Columbia, file:

- (a) A Form NF, Uniform Investment Company Notice Filing Form, or its successor;
- (b) A Form U-2, a consent to service of process; and
- (c) A filing fee as provided in §§ 1949.4, 1949.5, and 1949.6.

1940.2 In the case of renewal filings, issuers of securities that are federal covered securities under Section 18(b)(2) of the Securities Act of 1933 and that are not otherwise exempt under Section 18(b)(1) of the Securities Act of 1933 that will continue to offer the securities to the residents of the District of Columbia after the expiration of a notice filing period shall file:

- (a) A Form NF, Uniform Investment Company Notice Filing Form,;
- (b) A Form U-2, a consent to service of process, or a statement that the previously filed Form U-2 is current; and
- (c) A filing fee (including sales report, if applicable) as provided in §§ 1949.4 or 1949.5.

1940.3 In the case of final filings, issuers of securities that are federal covered securities under Section 18(b)(2) of the Securities Act of 1933 and that are not otherwise exempt under Section 18(b)(1) of the Securities Act of 1933 that will not continue to offer the securities to the residents of the District of Columbia after the expiration of the current notice filing period shall file a Form NF that indicates that the subject offering is being terminated or withdrawn, and pay a filing fee for the period (including sales report, if applicable) as provided in §§ 1949.4, and 1949.5.

1940.4 Initial notice filings shall be made before the issuer begins to offer or sell the securities that are the subject of the filing to residents of the District of Columbia. Renewal filings and final filings shall be filed on or before the 60th day following the last date of effectiveness of the filing that is being renewed or is the final filing.

1940.5 The effective period for initial notice filings of face amount certificate and open-end management companies shall begin on the later of the date on which the Department receives the last of the items required by § 1940.1 for initial filings or the date on which the registration statement for the securities is declared effective by the SEC, and shall end on the last day of the issuer's fiscal year that occurs soonest after the beginning date. The effective period for renewal notice filings of face amount certificate and open-end management companies terms shall be for the twelve months beginning the day after the end of the initial period, provided that the filer complies with the renewal filing requirements in this section.

1940.6 The initial effective period for unit investment trusts and closed-end management companies shall be for the twelve months beginning on the later of the date on which the Department receives the last of the items required by § 1940.1 or the date on which the registration statement for the securities is declared effective by the SEC. At the time of filing the unit investment trust filer may obtain an eighteen month period of effectiveness by submitting a request for the extended period that is accompanied by an additional fee as provided in § 1949.5.

1940.7 The issuer shall notify the Department promptly of fundamental corporate changes, changes in the nature of the subject security, changes in the fiscal

year of the issuer, name changes, address changes or changes in the name of the contact person or third party filer, by sending a letter to the Director, Securities Bureau, or by filing with the Department a copy of the amended documents filed with the SEC or a revised Form NF.

1940.8 Form NF may be filed with the Department in electronic form in compliance with instructions to be issued by the Commissioner.

1940.9 Form NF may be executed by an authorized individual by electronic signature in compliance with instructions to be issued by the Commissioner.

1941 NOTICE FILING OF SECURITIES COVERED UNDER SECTIONS 18(B)(3) AND 18(B)(4)(A)--(C) OF THE SECURITIES ACT OF 1933

1941.1 An issuer that intends to offer or sell federal covered securities under §18(b)(3) or (b)(4)(A)--(C) of the Securities Act of 1933 shall submit a notice filing with the Department. A notice filing under this section shall contain the following information and be accompanied by the following fees and documents:

- (a) A copy of each document filed, if any, with the SEC under the Securities Act of 1933 with respect to the offer or sale of federal covered securities;
- (b) Form U-2, Uniform Consent to Service of Process; and,
- (c) Pay a filing fee as provided in § 1949.7.

1942 NOTICE FILING FOR SECURITIES COVERED UNDER SECTION 18(B)(4)(D) – SEC REGULATION D

An issuer of a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall submit a notice filing with the Commissioner. A notice filing under this section shall contain the following information and be accompanied by the following documents and fee:

- (a) Securities and Exchange Commission Form D;
- (b) Form U-2, consent to service of process, within 15 days of the first sale of a federal covered security in the District; and,
- (c) Pay a filing fee as provided in § 1949.8.

1943 NOTICE FILING REQUIREMENT FOR ISSUERS CLAIMING AN EXEMPTION UNDER THE ACT

- 1943.1 Issuers relying upon the exemptions from registration found in §§ 401(7), (8), (10), (12); or §§ 402 (12), (16), (18), or (19) of the Act shall comply with the notice filing and fee requirements of this section. The burden of proving a claim to an exemption or an exception from a definition is upon the person claiming it.
- 1943.2 Except for the exemptions found in the sections referenced in § 1943.1, issuers relying upon the exemptions from registration found in §§ 401 and 402 of the Act shall not file any notice, or pay any fee to the Department.
- 1943.3 An issuer relying upon an exemption found in §§ 401(8) or 401(12) of the Act shall file a written notice with the Commissioner at least ten (10) days prior to the first offering of sale pursuant to the exemption. The notice filing under this subsection shall contain the following information:
- (a) The identity of the issuer;
 - (b) The amount and type of securities to be sold pursuant to the exemption;
 - (c) A description of the use of proceeds of the securities;
 - (d) The person or persons by whom offers and sales will be made;
 - (e) An affirmation that a commission or remuneration for soliciting any prospective buyer will not be paid except to a broker-dealer or issuer's agent registered in the District; and
 - (f) An affirmation that all prospective buyers will receive, before any sale, a disclosure document containing the material terms of the proposed offering.
- 1943.4 The notice filed with the Commissioner pursuant to § 1943.3 shall be accompanied by the following:
- (a) Offering document, containing material terms of the proposed sale; copies of any sales and advertising literature to be used to sell the securities;
 - (b) Certified copies of articles of incorporation and bylaws, or documents that serve those purposes;

- (c) Evidence of tax exempt status; and, audited financial statements for the most recent fiscal year or calendar year;
- (d) Form U-2, Uniform Consent to Service of Process; and
- (e) A fee required by § 1949.11.

1943.5 An issuer relying upon an exemption from registration found in §§ 401(7), (10); or §§ 402(16), (18), or (19) of the Act shall file a written notice with the Commissioner at least twenty (20) days prior to the first offering of sale pursuant to such claim. The notice filing under this subsection shall contain the following information:

- (a) The identity of the issuer;
- (b) The amount and type of securities to be sold pursuant to the exemption;
- (c) A description of the use of proceeds of the securities;
- (d) The person or persons by whom offers and sales will be made;
- (e) An affirmation that a commission or remuneration or soliciting any prospective buyer will not be paid except to a broker-dealer or issuer's agent registered in the District; and
- (f) An affirmation that all prospective buyers will receive, before any sale, a disclosure document containing the material terms of the proposed offering.

1943.6 The notice filed with the Commissioner pursuant to § 1943.5 shall be accompanied by the following:

- (a) Offering document, containing material terms of the proposed sale; copies of any sales and advertising literature to be used to sell the securities;
- (b) Form U-2, Uniform Consent to Service of Process; and
- (c) A fee required by § 1949.11.

1943.7 The exemption from registration found in § 402(12)(A) of the Act shall only be available to issuers that would otherwise be required to file a prospectus with the Department.

- 1943.8 An issuer offering securities pursuant to rule 504 of SEC Regulation D, 17 C.F.R. § 230.504, may use the exemption found in § 402(12)(A) of the Act. Such issuers shall be prohibited from making offers to more than ten (10) persons, during any period of twelve (12) consecutive months. For purposes of calculating the number of persons pursuant to this subsection, the issuer should refer to the definition of “person” found in § 101(23) of the Act.
- 1943.9 An issuer relying upon an exemption found in §§ 402(12)(A) of the Act shall file a written notice with the Commissioner at least twenty (20) days prior to the first offering of sale pursuant to such claim. The notice filing under this subsection shall contain the following information:
- (a) The identity of the issuer;
 - (b) The amount and type of securities to be sold pursuant to the exemption;
 - (c) A description of the use of proceeds of the securities;
 - (d) The person or persons by whom offers and sales will be made;
 - (e) An affirmation that a commission or remuneration for soliciting any prospective buyer will not be paid except to a broker-dealer or issuer’s agent registered in the District; and
 - (f) An affirmation that all prospective buyers will receive, before any sale, a disclosure document containing the material terms of the proposed offering.
- 1943.10 The notice filed with the Commissioner pursuant to this § 1943.9 shall be accompanied by the following:
- (a) Offering document, containing material terms of the proposed sale; copies of any sales and advertising literature to be used to sell the securities;
 - (b) Form U-2, Uniform Consent to Service of Process; and
 - (c) A fee required by § 1949.11.
- 1943.11 Issuers relying on an exemption covered by this section shall not pay any commission or remuneration for soliciting any prospective buyer, except to a broker-dealer or issuer’s agent registered in the District.

- 1943.12 Issuers relying on an exemption covered by this section shall provide, prior to any sale, all prospective buyers with a disclosure document containing the material terms of the proposed offering.
- 1943.13 An exemption for an offering made pursuant to this section shall be effective for 1 year from the date that the notification filing is accepted by the Commissioner. An exemption may be extended for successive 1-year periods by complying with the applicable notice filing and fee provisions of this section.
- 1943.14 If an exemption covered by this section is disallowed by the Commissioner, the offering must be registered under Section 302, 303 or 304 of the Act, unless another exemption is available.
- 1943.15 The Commissioner retains the right to take action under the Act against an issuer or other person that fails to comply with the requirements of this section.

1944 LIMITED OFFERING EXEMPTION (SEC RULE 505)

- 1944.1 Pursuant to Sections 401 and 402 of the Act, transactions involving securities offered or sold in compliance with Rules 501, 502, 503, and 505 of SEC Regulation D, 17 C.F.R. Sec. 230.501 (1990); 17 C.F.R. Sec. 230.502 (1990); 17 C.F.R. Sec. 230.503 (1990); 17 C.F.R. Sec. 230.505 (1990), are exempt from the registration of section 301 of the Act, provided the requirements of section 306(c) of the Act and the following conditions and limitations are met:
- (a) No commission, finders fee, or other remuneration shall be paid or given to any dealer, or salesman for soliciting any prospective purchaser in connection with sales of securities in reliance on this exemption.
 - (b) No exemption under this section shall be available for the securities of any issuer, if the issuer or any of its affiliates:
 - (1) Is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to commencement of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or District;

- (2) Has been convicted within five years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, theft by conversion, theft by deception, larceny, or conspiracy to defraud;
 - (3) Is subject to any order, judgment, or decree issued by any state or District securities administrator, the United States Securities and Exchange Commission, the United States Commodities Futures Trading Commission, or the United States Postal Service in which fraud, deceit or registration violations were found, after notice and opportunity for hearing, if the order was entered within five years prior to the commencement of the offering in reliance upon this exemption; or
 - (4) Is subject to any order barring or suspending membership in any self-regulatory organization registered pursuant to the Securities Exchange Act of 1934 (48 Stat. 881; 15 U.S.C. § 78a *et seq.*), if the order was entered within five years prior to the commencement of the offering in reliance upon this exemption.
- (c) The disqualification referred to in subparagraph (b) above shall not apply:
 - (1) If the issuer or its affiliate subject to the disqualification is currently registered or licensed to conduct securities-related business in the jurisdiction where the administrative order or judgment was entered against such issuer or affiliate;
 - (2) The license of the person subject to the disqualification has not been suspended or revoked, and there are no pending proceedings against the person; or
 - (3) If the Commissioner, in his discretion, waives the disqualification.
- (d) The issuer shall file with the Commissioner a notice of intention to sell using SEC Form D (17 C.F.R. §239.500), or any successor form, to the extent such information is available, prior to the sale or the receipt, in escrow or otherwise, of consideration from an

investor in the District in reliance upon this exemption. Said notice of intention to sell shall be accompanied by the following:

- (1) A non-refundable filing fee as provided in § 1949.2;
- (2) A consent to service of process in Form U-2 which has been executed by the applicant; and
- (3) A copy of any prospectus as defined in the Act and these regulations that is to be used in connection with the offer and sale of securities to unaccredited purchasers pursuant to this exemption.

1944.2 The exemption provided in this section shall not apply to those transactions offered and sold in reliance under rule 504 of SEC Regulation D, 17 C.F.R. §230.504.

1944.3 In the event the offering is to continue pursuant to this exemption more than twelve months after the date on which the Commissioner issues his certificate, then it shall be necessary for the issuer to file a renewal application prior to the expiration date of the original certificate, containing the following:

- (a) A completed SEC Form D; and
- (b) A copy of any prospectus as defined in these regulations to be used in connection with the offer and sale of securities to unaccredited purchasers pursuant to this exemption.

1944.4 The applicant shall promptly furnish any additional information requested by the Commissioner. A final report is not required unless specifically requested by the Commissioner.

1944.5 Any notice on or amendment to SEC Form D required by this section shall be manually signed by a person authorized by the issuer.

1944.6 If more than one notice is required to be filed pursuant to this section, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in parts A and B of SEC Form D.

1944.7 Any filing pursuant to the exemption provided in this section shall be amended by filing promptly with the Department such information and changes as may be necessary to correct any material misstatement or omission in the filing. Any prospectus required by these regulations that was not prepared at the time of filing, or which materially differs from a

prospectus included in the filing, shall be delivered or mailed to the Commissioner prior to its use. There shall be no fees charged for amendments to filings pursuant to this section.

- 1944.8 The Commissioner shall notify the applicant of a deficient filing. This notification shall serve as a certificate of noncompliance, and if the deficiencies are not corrected within 60 days the filing may be deemed abandoned without further notice to the applicant.
- 1944.9 Unless otherwise indicated in these regulations or in conflict with the requirements of sections 306 and 403, the standards, definitions, and conditions imposed by Rules 501, 502, 503, and 505 of SEC Regulation D shall be applicable to offers and sales made in the District pursuant to the Rule.
- 1944.10 Nothing in this section is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from the antifraud provisions of the Act.
- 1944.11 The aggregate number of unaccredited purchasers of securities sold under this exemption shall not exceed 35 purchasers in the District during any 12-month period, exclusive of purchasers acquiring securities that are registered pursuant to the Act.

1945 COORDINATED REGISTRATION

The Commissioner may enter into cooperative and reciprocal agreements with securities administrators of this and other jurisdictions in the United States (and Canada and U.S. territories) to participate in a coordinated review of securities offerings in lieu of conducting a separate review.

1946 INITIAL AND RENEWAL REGISTRATION AS ISSUER AGENT

- 1946.1 An applicant for initial registration as an issuer agent shall file with the Commissioner:
- (a) An application upon Form U-4 (Uniform Application for Securities Industry Registration or Transfer);
 - (b) A statement or certificate demonstrating that the applicant has satisfied the examination requirement of section 1946.2 of the regulation; and
 - (c) A fee provided in § 1949.9.

- 1946.2 An application for initial registration as an issuer agent shall have passed, with a score of 70 percent or better, the series 63 examination and either the Series 6 or Series 7 examination administered by the NASD unless:
- (a) The applicant exclusively engages in the purchase and sale of securities in connection with offerings that are exempt under section 401 of the Act or transactions that are exempt under section 402 of the Act; or
 - (b) The Commissioner in his discretion waives the examination requirement.
- 1946.3 An applicant for renewal registration as an issuer agent shall file with the Commissioner:
- (a) An application on the form as required by the Commissioner; and
 - (b) A renewal fee as provided in § 1949.9.

1947 NO ACTION LETTERS AND INTERPRETIVE OPINIONS

- 1947.1 In case of any question concerning the Act, the Director's staff may in his sole discretion entertain a request for a no-action letter or interpretive opinion. If issued, a no-action letter or an interpretive opinion only expresses the current position of the Director with respect to possible enforcement action, and is not binding on the Commissioner or third parties. A request for a no-action letter or interpretive opinion must be in writing and in the format described in SEC Release No. 33-6269, (Procedures Applicable to Request for No-Action and Interpretive Letters, December 5, 1980).
- 1947.2 No person may rely on oral statements by the staff of the Department or represent that the staff or any unit of the Department has taken a no-action position or issued an interpretation based on an oral statement by a staff member.
- 1947.3 The Securities Bureau will maintain all no-action letters and interpretive opinions issued. Copies of such letters may be reviewed in the Department's office and copies thereof obtained upon payment of reasonable costs of duplication.
- 1947.4 A person requesting a no action letter or interpretive opinion shall pay a fee as provided in § 1949.10.

1948 RESERVED

1949 SECURITIES REGISTRATION FEES

- 1949.1 An issuer filing an application for registration by Notification pursuant to § 1901, Coordination pursuant to § 1902, or Qualification pursuant to § 1904 shall pay a filing fee in the amount of 1/10 of 1% of the maximum aggregate offering price with a minimum of \$500 and maximum of \$1500.
- 1949.2 An issuer filing an application for registration by Coordination of Shelf Registration pursuant to SEC Rule 415 of the 1933 Act, as provided in § 1903 shall pay a fee in the amount of 1/10 of 1% of the maximum aggregate offering price with a minimum of \$500 and maximum of \$1500; and the Limited Offering Exemption pursuant to § 1944 shall pay a fee in the amount of 1/10 of 1% of the maximum aggregate offering price with a minimum of \$250 and maximum of \$1500.
- 1949.3 An issuer filing an application for Small Corporate Offering registration pursuant to § 1905 shall pay a fee in the amount of 1/10 of 1% of the maximum aggregate offering price with a minimum of \$250 and maximum of \$1000.
- 1949.4 An issuer making a notice filing for offerings of investment company securities pursuant to § 1940 shall pay a fee in the amount of a \$400 non-refundable notice filing fee per class at the time of an initial notice filing, and shall pay an additional amount per class as provided below for the period covered by that notice filing at the time of filing a renewal filing or a final filing as provided in §§ 1940.2 and 1940.3. At the expiration of a notice filing period, the issuer has the option of paying: (1) an additional flat fee of \$1300 per class; or (2) an additional fee of 1/10 of 1% of gross sales in the District less the initial payment of \$400. Issuers that elect option (2) must file a sales report that sets forth the dollar volume of sales of the subject securities to residents of the District for each class for which that option is elected. For example, issuers electing option (2) shall be required to pay a \$400 non-refundable fee paid at the time of the initial filing. If gross sales in the District equal \$900,000, 1/10 of 1% of gross sales equals \$900. The additional fee would be \$500 (\$900 – 400). If 1/10 of 1% of gross sales is less than \$400, then no additional fee is required. The renewal fee is \$400 per class payable at the time of the renewal filing.
- 1949.5 A unit investment trust that requests a notice filing period of 18 months as provided in § 1940.6, shall pay an additional fee of \$ 200 for a total of \$600 due at the time of the notice filing. At the expiration of the eighteen month notice filing period, the issuer has the option of paying: (1) a flat fee of \$1950 per class; or (2) a fee of 1/10 of 1% of gross sales in the

District less the initial payment of \$600. Issuers that elect option (2) must file a sales report that sets forth the dollar volume of sales of the subject securities to residents of the District for each class for which that option is elected.

- 1949.6 As provided in § 1940.6, the period of effectiveness of a notice filing for a unit investment trust and closed-end management company shall be 12 months from the effective date of the initial filing, and the anniversary date of that filing for subsequent years, so long as the requirements of § 1940 are complied with. The period of effectiveness of face amount certificate and open-end management companies shall expire on the day the issuer's fiscal year ends. If the effective date of the initial notice filing of face amount certificate, and open-end management companies is not the first day of the issuer's fiscal year, the \$1300 payment that is an option at the end of the notice filing period shall be prorated on the basis of one twelfth of \$1300 for each month or portion of a month between the effective date of the filing and the expiration date of the filing. For example, if the initial notice filing effective date is June 1, 2001, and the issuer has a fiscal year end of December 31, 2001, the fee under option (1) of §1949.4 would be \$758.33 ($7/12 \times \1300).
- 1949.7 An issuer filing an application for securities covered under §§ 18(B)(3) and (B)(4)(A) through (B)(4)(C), pursuant to § 1941 shall pay a fee in the amount of \$250 due at the time of notice filing.
- 1949.8 An issuer filing an application for securities covered under § 18(B)(4)(D), pursuant to § 1942 shall pay a fee in the amount of \$250 due at the time of notice filing.
- 1949.9 An applicant for initial or renewal registration as an issuer agent license shall pay a fee in the amount of \$45.00.
- 1949.10 A person requesting a no action letter or interpretive opinion shall pay a fee in the amount \$250.00.
- 1949.11 An issuer claiming an exemption under § 1943 shall pay a fee in the amount of \$100.00, due at the time of the filing.
- 1949.12 All fees due under §§ 1949.1 through 1949.11 shall be paid by check or money order made payable to the "D.C. Treasurer".

1950 DEFINITIONS

As used in this chapter, the following terms shall have the meanings indicated:

Act shall mean the Securities Act of 2000, effective September 29, 2000 (D.C. Law 13-203, 47 DCR 7837, D.C. Official Code § 31-5601.01 *et seq.* (2001 Ed.)).

Affiliate of, or person “affiliated” with, a specified person, is a person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Agent has the same meaning as in the Act.

Issuer agent means an agent, other than a broker-dealer agent, who represents an issuer in effecting or attempting to effect the purchase or sale of securities, and who is not exempt from registration under Title II of the Act.

Blind pool offering means an offering in which either:

(A) The offering materials do not describe specific operational plans.

(B) Eighty per cent or more of the net offering proceeds are not specifically allocated for the purchase, construction, or development of identified property or products, for the payment of indebtedness or overhead expenses, or for other activities set forth in the issuer’s business plan.

Control (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Director means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

Equity security means any:

(A) Stock or similar security;

(B) Security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or

(C) Such warrant or right.

Material when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor reasonably ought to be informed before purchasing the security registered.

Officer means a president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing

similar functions with respect to any organization, whether incorporated or unincorporated.

Predecessor means a person, the major portion of the business and assets of which another person acquired in a single succession, or in a series of related successions, in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

Promoter includes any person who:

(A) Acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer;

(B) In connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives the securities or proceeds either solely as underwriting commissions or solely in consideration of property may not be deemed a promoter within the meaning of this subsection if the person does not otherwise take part in founding and organizing the enterprise.

Significant subsidiary means a subsidiary meeting any one of the following conditions:

(A) The assets of the subsidiary, or the investments in and advances to the subsidiary by its parent and the parent's other subsidiaries, if any, exceed 15 percent of the assets of the parent and its subsidiaries on a consolidated basis.

(B) The sales and operating revenues of the subsidiary exceed 15 percent of the sales and operating revenues of its parent and the parent's subsidiaries on a consolidated basis;

(C) The subsidiary is a parent of one or more subsidiaries and, together with the subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

Subsidiary of a specified person is an affiliate controlled by that person directly, or indirectly through one or more intermediaries.

Succession means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business, unless followed by the direct acquisition of its assets. The terms "succeed" and "successor" have meanings correlative to the foregoing.